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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 SAMEISHA EDWARDS,) No. CV 08-07428 GAF(SSx)
12 Plaintiff,)
13 v.) MEMORANDUM AND ORDER RE PARTIES'
14 COUNTY OF LOS ANGELES, et al.) STIPULATION FOR PROTECTIVE ORDER,
15 Defendants.) STIPULATION FOR IN CAMERA REVIEW
16) AND PROPOSED ORDERS
17)

18 The Court has received and considered the parties' Stipulation and
19 [Proposed] Protective Order ("Protective Order Stipulation") and the
20 Stipulation Re In Camera Review of Personnel Records of Defendant
21 Officers Archuletta and Pilace ("In Camera Stipulation") as well as the
22 proposed orders submitted with each stipulation. The Court is unable to
23 adopt the proposed orders as stipulated to by the parties for the
24 following reasons:

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1 **A. Protective Order Stipulation And Proposed Order**

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3 A protective order must be narrowly tailored and cannot be
4 overbroad. Therefore, the documents, information, items or materials
5 that are subject to the protective order shall be described in a
6 meaningful fashion (for example, "personnel records," "medical records,"
7 or "financial information," etc.). It is not sufficient to use only the
8 conclusory description "materials that contain information that is
9 sensitive in nature." (See Stipulation ¶ 1).

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11 Furthermore, the Court cannot agree that "any pleadings, motions,
12 briefs, etc., or other submissions to the Court in this litigation which
13 contain, reflect, incorporate or refer to Confidential Information shall
14 be filed and maintained under seal." (Stipulation at ¶ 8). This
15 language would be contrary to this Court's Local Rule 79-5.1. The
16 parties are directed to review this Local Rule. If confidential
17 material is included in any papers to be filed in Court, such papers
18 shall be accompanied by an application to file the papers -- or the
19 confidential portion thereof -- under seal. The application shall be
20 directed to the judge to whom the papers are directed. Pending the
21 ruling on the application, the papers or portions thereof subject to the
22 sealing application shall be lodged under seal. Moreover, any disputes
23 over the designation of confidential information may only be resolved by
24 the procedures described in Local Rule 37. The parties are also
25 directed to review this Local Rule.

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27 Finally, the Protective Order Stipulation and proposed order do not
28 establish the requisite good cause. Pintos v. Pac. Creditors Ass'n, 565

1 F.3d 1106, 1115 (9th Cir. 2009) ("The relevant standard [for the entry
2 of a protective order] is whether good cause exists to protect the
3 information from being disclosed to the public by balancing the needs
4 for discovery against the need for confidentiality." (internal quotation
5 marks and alteration omitted)); Foltz v. State Farm Mut. Auto Ins. Co.,
6 331 F.3d 1122, 1130 (9th Cir. 2003) (court's protective order analysis
7 requires examination of good cause (citing Phillips v. Gen. Motors
8 Corp., 307 F.3d 1206, 1210-11, 1212 (9th Cir. 2002)); San Jose Mercury
9 News, Inc. v. United States Dist. Ct., 187 F.3d 1096, 1102 (9th Cir.
10 1999)).

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12 The court may only enter a protective order upon a showing of good
13 cause. Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1176
14 (9th Cir. 2006) (stipulating to protective order insufficient to make
15 particularized showing of good cause, as required by Rule 26(c));
16 Phillips, 307 F.3d at 1210-11 (Rule 26(c) requires a showing of good
17 cause for a protective order); Makar-Wellbon v. Sony Electronics, Inc.,
18 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
19 require good cause showing).

20
21 In any revised stipulated protective order submitted to this Court,
22 the parties must include a statement demonstrating good cause for entry
23 of a protective order pertaining to the documents or information
24 described in the order. The documents to be protected shall be
25 specifically described and identified. The paragraph containing the
26 statement of good cause should be preceded by the phrase: "GOOD CAUSE
27 STATEMENT." The parties shall articulate, for each document or category
28 of documents they seek to protect, the specific prejudice or harm that

1 will result if no protective order is entered. Foltz, 331 F.3d at 1130
2 (citations omitted).

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4 In any revised stipulation regarding discovery or the protection of
5 documents, the parties shall include the following in the caption:
6 "[Discovery Document: Referred to Magistrate Judge Suzanne H. Segal]."

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8 **B. In Camera Stipulation And Proposed Order**

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10 The parties submitted a stipulation and proposed order seeking in
11 camera review of the Defendants' personnel records. However, the Court
12 cannot proceed with in camera review at this time nor can the Court
13 adopt the proposed order, for the reasons stated below.

14
15 The parties filed a stipulation reflecting that Plaintiff
16 propounded discovery requests seeking personnel records of Defendants
17 (In Camera Stipulation at ¶2). Defendants objected based upon privacy
18 grounds and on the grounds that the requests were overbroad (Id. at ¶
19 3). The parties then determined that they would submit both of the
20 officers' personnel files to the Court and seek in camera review of the
21 records. According to the parties, the Court would then decide which,
22 if any, documents should be produced to Plaintiff.

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24 The Court cannot follow the procedure agreed to by the parties as
25 it is inconsistent with the law governing the assertion of privilege in
26 federal litigation. Formally claiming a privilege involves specifying
27 which information and documents are privileged and for what reasons,
28 especially when the nature of the information or documents does not

1 reveal an obviously privileged matter. Clarke v. American Commerce
2 Nat'l Bank, 974 F.2d 127, 129 (9th Cir. 1992). Federal law governs
3 whether personnel records of police officers and other public officials
4 should be disclosed during civil rights litigation. In camera review is
5 not necessarily required. See Miller v. Pancucci, 141 F.R.D. 292, 298-
6 301 (C.D. Cal. 1992) (holding that federal law controlled on issue of
7 discovery privileges asserted in federal civil rights case, and police
8 defendants were mistaken in believing that the court should undertake an
9 automatic in camera inspection).

10
11 To the extent Defendants are actually relying on the "official
12 information privilege" to withhold the requested documents, Defendants
13 have not followed the necessary steps to assert this privilege. The
14 official information privilege is a privilege recognized by federal
15 common law and protects the disclosure of certain types of official
16 information. In Sanchez v. City of Santa Ana, 936 F. 2d 1027, 1033-34
17 (9th Cir. 1990), the Ninth Circuit recognized this privilege as a
18 "qualified" one that protects official information such as personnel
19 records. The Sanchez court found that the requested information could
20 be made be available to the plaintiff through interrogatories and upheld
21 the trial court's ruling that the actual records could be withheld. See
22 also Kerr v. U.S. Dist. Court, 511 F.2d 192, 198 (9th Cir. 1975)
23 (holding that qualified privilege applied to prisoner request for
24 discovery of parole board materials, including personnel files, in §
25 1983 action).

1 District courts, in applying the privilege, have recognized that
2 the court must balance the government's interest in protecting official
3 information from disclosure against the plaintiff's need for the
4 information. In civil rights cases, the balancing is "moderately pre-
5 weighted in favor of disclosure." Kelly v. City of San Jose, 114 F.R.D.
6 653, 661 (N.D. Cal. 1987); accord Miller, 141 F.R.D. at 300.

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8 These cases also recognize that, before the court even engages in
9 the balancing test or in camera review, the party asserting the
10 privilege (here, Defendants) must invoke the privilege by making a
11 "substantial threshold showing." Kelly, 114 F.R.D. at 669. To make the
12 threshold showing, defendants must submit a declaration from the head of
13 the department having control over the records and must satisfy certain
14 requirements. Chism v. County of San Bernardino, 159 F.R.D. 531, 533
15 (C.D. Cal. 1994); see also Kerr, 511 F.2d at 198.

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17 The declaration must include the following:

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19 (1) an affirmation that the agency generated or collected the
20 material at issue and has maintained its confidentiality; (2) a
21 statement that the official has personally reviewed the material in
22 question; (3) a specific identification of the governmental or privacy
23 interests that would be threatened by disclosure of the material to
24 plaintiff and/or his lawyer; (4) a description of how disclosure subject
25 to a carefully crafted protective order would create a substantial risk
26 of harm to significant governmental or privacy interests, and (5) a
27 projection of how much harm would be done to the threatened interests if
28 disclosure were made. Chism, 159 F.R.D. at 533; Hampton v. City of San

1 Diego, 147 F.R.D. 227, 230-31 (S.D. Cal. 1993); Miller, 141 F.R.D. at
2 300. Only after the court determines that the defendant's submissions
3 meet the threshold burden will an in-camera review occur. Id. at 301.¹
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5 To the extent Defendants are asserting their "right to privacy,"
6 Defendants have not properly asserted that right merely by stating that
7 there may be private information Defendants' personnel files. Although
8 the right to privacy is not a federally recognized privilege, many
9 federal courts have considered it in discovery disputes. See DeMasi v.
10 Weiss, 669 F.2d 114, 120 (3rd Cir. 1982); Cockrum v. Johnson, 917 F.
11 Supp. 479, 481 (E.D. Tex. 1996); Soto v. City of Concord, 162 F.R.D.
12 603, 616 (N.D. Cal. 1995). However, the right to privacy is not
13 absolute. In determining whether privacy is subject to invasion, the
14 court must balance Defendants' asserted right to privacy against the
15 relevance and necessity of the information sought by Plaintiff. See
16 Johnson v. Thompson, 971 F.2d 1487, 1497 (10th Cir. 1992) (citing
17 Lukaszewicz v. Ortho Pharmaceutical Corp., 90 F.R.D. 708, 709 (E.D. Wis.
18 1981)), cert. denied, 507 U.S. 910, 113 S. Ct. 1255, 122 L. Ed. 2d 654
19 (1993); Cockrum, 917 F. Supp. at 482 (citing Soto, 162 F.R.D. at 616);
20 Ragge v. MCA/Universal, 165 F.R.D. 601, 604-05 (C.D. Cal. 1995)
21 (requiring a balance of a party's right to privacy against the
22 importance of the information to the case). Where a seeking party's
23 need is great, the right to privacy can be overcome. Soto, 162 F.R.D.
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26 ¹Of course, the parties are free to make an agreement among
27 themselves regarding the disclosure of documents to each other.
28 However, when the parties seek the Court's resolution of the dispute,
in the form of a court order, the Court must follow the applicable
law.

1 at 617; Ceramic Corp. of America v. Inka Maritime Corp. Inc., 163 F.R.D.
2 584, 589 (C.D. Cal. 1995); Ragge, 165 F.R.D. at 605.

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4 Here, the parties have not provided sufficient information for this
5 Court to engage in the balancing process. Accordingly, the Court
6 declines to adopt the Stipulation for In Camera Review and Proposed
7 Order at this time.

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10 DATED: December 9, 2009.

/S/

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12 SUZANNE H. SEGAL
13 UNITED STATES MAGISTRATE JUDGE
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